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NORFOLK & W. RY. CO. *v.* MUNDY.

Nov. 18, 1909.

[66 S. E. 61.]

**1. Contracts (§ 176\*)—Construction—Question for Court.**—The general rule in that the construction of all written instruments adduced in evidence is solely for the court.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. §§ 767-770, 1097; Dec. Dig. § 176.\* 7 Va.-W. Va. Enc. Dig. 857.]

**2. Covenants (§ 125\*)—Measure of Damages for Breach—Covenant of Seisin.**—The measure of damages for breach of a covenant of seisin, where nothing passes by the deed, is the consideration paid, with interest.

[Ed. Note.—For other cases, see Covenants, Cent. Dig. § 235; Dec. Dig. § 125.\* 3 Va.-W. Va. Enc. Dig. 764.]

**3. Estoppel (§ 68\*)—Position in Judicial Proceeding—Binding Effect of Decrees.**—Where a defendant was impleaded with another, and on his own motion, against the protest of his codefendant, the suit was dismissed as to him, on the ground that he was not a necessary party, though complainant insisted that he be retained as a party to aid in the defense, so there might be a decree over against him in case of an adverse decision, he is estopped to deny the binding effect of the decrees therein.

[Ed. Note.—For other cases, see Estoppel, Cent. Dig. § 165; Dec. Dig. § 68.\* 5 Va.-W. Va. Enc. Dig. 203.]

**4. Covenants (§ 121\*)—Persons Bound by Judgment—Party Failing to Defend on Notice.**—It is common practice to give notice to one bound by a covenant of title of the pendency of suit involving such title, and to appear and defend; and, if on such notice he fails or refuses to do so, he is as much bound by the judgment or decree in the case as if he had been formally impleaded.

[Ed. Note.—For other cases, see Covenants, Cent. Dig. § 223; Dec. Dig. § 121.\*]

**5. Evidence (§ 409\*)—Parol Evidence Affecting Deed of Release.**—It is error to admit parol evidence to vary, contradict, or add to the plain and unambiguous terms of a deed of release.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1843-1845; Dec. Dig. § 409.\* 10 Va.-W. Va. Enc. Dig. 654.]

**6. Pleading (§ 355\*)—Appeal and Error (§ 1042\*)—Striking Out Special Plea—Harmless Error.**—It is error to overrule a motion to strike out special pleas equivalent to the general issue, though failure to strike them out does not of itself constitute reversible error.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 1102; Dec. Dig. § 355;\* Appeal and Error, Cent. Dig. §§ 4112, 4113; Dec. Dig. § 1042.\* 11 Va.-W. Va. Enc. Dig. 258.]

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

Error to Circuit Court, Botetourt County.

Action by the Norfolk & Western Railway Company against James Mundy. There was a judgment for plaintiff for less than the amount claimed, and it brings error. Reversed.

*T. W. Reath, M. McCormick, and E. M. Pendleton*, for plaintiff in error.

*Bcnj. Haden*, for defendant in error.

CAMP MFG. CO. *v.* COMMONWEALTH et al.

Nov. 26, 1909.

[66 S. E. 224.]

**1. Taxation (§ 318\*)—Time of Assessment—Five-Year Period—Adoption of Previous Assessment.**—County assessors having in 1905 assessed standing merchantable timber owned by plaintiff pursuant to Code 1904, § 437, providing for the appointment of assessors to assess all land in the year 1905 and every fifth year thereafter, as required by Const. § 171 (Code 1904, p. cclxiii), an assessment of such timber in 1908 by merely following the assessment of 1905 in making out the land books on which the taxes were extended, as required by Code 1904, § 509, was legal, independent of Act March 12, 1908 (Acts 1908, p. 331, c. 220), requiring the commissioners of revenue to assess on or before May 15, 1908, all standing merchantable timber owned separately from the land, and even if that act contravened Const. § 171.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 530, 531; Dec. Dig. § 318.\* 13 Va.-W. Va. Enc. Dig. 99.]

**2. Constitutional Law (§ 46\*)—Determination of Constitutional Questions—Necessity.**—Where an assessment of taxes was valid independent of a certain statute, the constitutionality of such statute will not be determined in an action to avoid such assessment.

[Ed. Note.—For other cases, see Constitutional Law, Cent. Dig. §§ 43-45; Dec. Dig. § 46.\* 13 Va.-W. Va. Enc. Dig. 105.]

Error to Circuit Court, Brunswick County.

Motion by the Camp Manufacturing Company against the Commonwealth and another to obtain exoneration from the payment of taxes. Order denying relief, and plaintiff brings error. Affirmed.

See, also, 63 S. E. 978.

*E. R. Turnbull, Jr.*, for plaintiff in error.

*The Attorney General and E. P. Buford*, for defendant in error.

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.